of bias on his part. *Nelson* v. *Hoskinson* (1920) 106 Kan. 601, 189 Pac. 165. In others, as held in the majority opinion, the judge may pass on the legal sufficiency of the affidavit, but if on its face sufficient, it disqualifies him even if the statements therein are wholly false. *Powers* v. *Commonwealth* (1902) 114 Ky. 237, 70 S. W. 644, 1050. To be legally sufficient, however, they must be such that a reasonable mind may fairly infer bias. See *Keown* v. *Hughes* (C. C. A. 1920) 265 Fed. 572, 577. Sound social policy requires that the judiciary not only be impartial but above suspicion of partiality. See *Garnett* v. *State* (1918) 15 Okla. Crim. 332, 336, 176 Pac. 769; *People* v. *Suffolk Com. Pleas* (N. Y. 1836) 18 Wend. 550, 552. Belief of prejudice, like prejudice itself, is a state of mind often not attributable to any given set of facts. Thus, apparently frivolous reasons for bias, honestly entertained, should theoretically be sufficient. See (61st Cong. 3rd Sess. 1911) 46 Congr. Record 2626. Accordingly, in some states an unsupported assertion of bias is enough. See *Howell* v. *State* (Fla. 1919) 81 So. 287. This rule, however, is open to great abuse. In the instant case, the Supreme Court has struck a practical mean between the two extremes. Moreover, although prejudice against a class is usually not sufficiently personal to disqualify, yet where such prejudice is so keen that it may well attach to individuals, the general rule is not properly applicable. *People* v. *District Court* (1915) 60 Colo. 1, 152 Pac. 149; (1920) 20 COLUMBIA LAW REV. 594; but see dissenting opinion of Mr. Justice McReynolds in instant case; *Ex parte N. K. Fairbanks Co.* (D. C. 1912) 194 Fed. 978, 989.

LEASE BY LIFE TENANT—CROPS MATURING AFTER LIFE-TENANT'S DECEASE.—A life-tenant leased his land for one-third of the annual wheat crop to be delivered at market, and died after the lessee had planted the crop, but before its maturity. His executor sues the lessee and the guardian of the remainderman, a minor, for the conversion of 415 bushels, one-third of the harvested crop. *Held,* the life-tenant's estate is not entitled to any share of the crop, since the rent had not accrued during the existence of the lease, which terminated with the life-estate. *Wyandt* v. *Merrill* (Kan. 1920) 193 Pac. 366.

Since at common law rent cannot be apportioned as to time in the absence of express stipulation, the lessee of the life-tenant is not liable for any portion when the estate ends before the rent day. See *Hoagland* v. *Crum* (1885) 113 Ill. 365. Under the doctrine of emblements, a lessee retains the crops, see *Edghill* v. *Mankey* (1907) 79 Neb. 347, 112 N. W. 570, even where he knows the life-tenant is almost certain to die before they can mature. *Bradley* v. *Bailey* (1888) 56 Conn. 374, 15 Atl. 746. Where land is cultivated on shares, the intention of the parties determines whether the cultivator is a tenant, a "cropper" (servant), or a partner in the crops. *Wagner* v. *Buttles* (1913) 151 Wis. 668, 139 N. W. 425; *Strangeway* v. *Eisenman* (1897) 68 Minn. 395, 71 N. W. 617. In construing the agreement, courts generally create a tenancy in common in the crops where the contract is not regarded as a lease; see *Mead* v. *Owen* (1907) 80 Vt. 273, 67 Atl. 722; *cf. Taylor* v. *Bradley* (1868) 39 N. Y. 129; and often regardless of the existence of a landlord-tenant relationship. *Fuhrman* v. *Interior Warehouse Co.* (1911) 64 Wash. 519, 116 Pac. 666; *Connell* v. *Richmond* (1887) 55 Conn. 401, 11 Atl. 852; see Freeman, *Cotenancy & Partition* (2nd ed. 1886) § 100. Some cases deny this, because a true tenant owns the crops entirely. *Clarke* v. *Cobb* (1898) 121 Cal. 595, 54 Pac. 74. That is a sound objection on common law principles. But the purpose of declaring a tenancy in common is to avoid letting the lessee use the land and secure the crops without making any compensation, as in the instant case. The encouragement of husbandry, which is the only real policy involved, hardly requires such an inequitable result. However, the difficulty has

been satisfactorily met by statutes in England and in many of our states which permit the representative of the life-tenant to recover a proportionate share of the rent under the accruing theory. See 1 Tiffany, *Landlord & Tenant* (1910) 1077, note 383. In some such jurisdictions, the life-tenant's share of the crop has been apportioned between the remainderman and the representative of the life-tenant. *Redmon* v. *Bedford* (1882) 80 Kan. 13.

MASTER AND SERVANT—FEDERAL EMPLOYERS' LIABILITY ACT—ASSUMPTION OF RISK.—The deceased, a freight engineer, while leaning out of his cab to inspect a hot driving pin in the discharge of his duty, was struck and killed by the end of the horizontally extended arm of a mail crane. The record disclosed the facts that the deceased had nothing to do with mail cranes and that he had been on passenger trains which gathered up mail but three times in the two years prior to his death. Furthermore, there was but a scant description of the dimensions of the crane or its appearance to one going by it swiftly. Despite this evidence, in a suit to recover compensation for the death under the Federal Employers' Liability Act, *held,* three Justices dissenting, no recovery allowed because, as a matter of law, the deceased had assumed the risk of employment. *Southern Pacific Co.* v. *Berkshire* (1921) 41 Sup. Ct. 162.

Under the Federal Employers' Liability Act the defense of assumption of risk remains as at common law where the defendant has not violated a statute enacted for the safety of employees. (1908) 35 Stat. 66, § 4, U. S. Comp. Stat. (1916) § 8660; *Seaboard Air Line Ry.* v. *Horton* (1914) 233 U. S. 492, 34 Sup. Ct. 635. To charge an employee with the assumption of risk the danger must be known to him or so patent that an ordinary person would have appreciated it. *Gila Valley, etc. Ry.* v. *Hall* (1914) 232 U. S. 94, 102, 34 Sup. Ct. 229; see *Choctaw, etc. R.R.* v. *McDade* (1903) 191 U. S. 64, 68, 24 Sup. Ct. 24. The burden of establishing that the employee has assumed the risk rests on the defendant, and the court should send the evidence to the jury unless it is clear and free from contradiction. See *Kanawha Ry.* v. *Kerse* (1916) 239 U. S. 576, 581, 36 Sup. Ct. 174. In the instant case the evidence seems far from clear and free from contradiction. Mr. Justice Holmes, who wrote the majority opinion, is a strong advocate of the doctrine that a judge is as well qualified as a jury to determine whether certain facts constitute negligence in a given situation. See *Lorenzo* v. *Wirth* (1898) 170 Mass. 596, 49 N. E. 1010; (1899) 12 Harvard Law Rev. 443, 457 *et seq*; but *cf.* Thayer, *Preliminary Treatise on Evidence* (1898) 249 *et seq.* The opinion in the principal case is an extension of this theory to the field of the assumption of risk. The court has gone far in reversing the finding of a jury and the judgment of two state courts on a question of fact.

MASTER AND SERVANT—FEDERAL SAFETY APPLIANCE ACTS—WORKMEN'S COMPENSATION LAW.—The plaintiff, a switchman in the employ of the defendant railroad company, was injured while acting in the course of his employment, but not in the aid of any interstate movement. The injury resulted from the defendant's failure to comply with the Federal Safety Appliance Acts. The defendant contends that the plaintiff's remedy is under the New York Workmen's Compensation Law, and not by private suit. *Held,* three judges dissenting, for the plaintiff. *Ward* v. *Erie R. R.* (Ct. of App. 1921) 230 N. Y. 230.

Since defective cars engaged in intrastate commerce on interstate highways are a menace to interstate commerce, it seems clear that Congress has the power to regulate them, which power it has exercised in the Federal Safety Appliance Acts. (1903) 32 Stat. 943 § 1, U. S. Comp. Stat. (1916) § 8613; *Southern Ry.* v. *United States* (1911) 222 U. S. 20, 32 Sup. Ct. 2. These statutes being penal